

Department of Legislative Reference

MICHAEL E. VOLK
Legislative Division
841/858 3852

MYRON H. MILLER
Research Division
841/858 3875

ELIZABETH BUCKLER VERONIS
Statutory Revision Division
841/858 3771

General Assembly of Maryland
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401-1991

F. CARVEL PAYNE
Director
Baltimore: 841 3865
D.C. Metro: 858 3865

MICHAEL C. COFFIN
Computer Services
Division
841 858 3787

LYNDA C. DAVIS
Library and
Information
Services Division
841/858 3810

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REPORT ON SENATE BILL 201
(First Reading File Copy)

REAL ESTATE BROKERS LAWS

I. GENERAL HISTORY OF THE REVISION.

As part of a continuing revision of the Annotated Code of Maryland by the Division of Statutory Revision of the Department of Legislative Reference, 16 revised articles and part of a 17th have become law: Agriculture, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Estates and Trusts, Family Law, Financial Institutions, Health--Environmental (now Environment), Health--General, Health Occupations, Natural Resources, Real Property, State Government, Tax-Property, Transportation, and the State Finance Division of State Finance and Procurement. Revisions of the Procurement Division (House Bill 1) and of the Tax-General Article (Senate Bill 1) are now pending. All of these articles have been prepared in accordance with the mandate of the Division, to rewrite the laws in a more organized, concise, and readable manner, without making substantive changes. The objective is to clarify the existing laws, but not to change their legal effect.

As part of the ongoing revision, the Division of Statutory Revision of the Department of Legislative Reference reviewed those laws proposed for inclusion in the Business Occupations Article. The problems inherent in the laws governing electricians, plumbers, and real estate brokers could not be resolved in routine nonsubstantive revision, because of the numerous gaps, inconsistencies, and ambiguities in those laws. Therefore, a Joint Subcommittee on the Business Occupations Article, comprised of members of the Senate Economic and Environmental Affairs Committee and the House Economic Matters Committee, was appointed to consider and to develop substantive legislation to address the substantive problems. The members of the Joint Subcommittee are Senator Gerald W. Winegrad and Delegate Joseph V. Lutz, as Co-chairmen, and Senators Michael Collins, John Derr, S. Frank Shore, and Delegates Hattie N. Harrison, George H. Littrell, Jr., and Lawrence Wiser.

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The Joint Subcommittee undertook to address the real estate brokers laws by careful review of a draft revision of the existing laws in which were noted, e.g., provisions that were inconsistent either with other laws relating to real estate brokers or to business occupations generally, provisions that were obsolete, provisions that were impracticable to apply, and provisions that were at variance with practice in the industry. The absence of provisions that generally appear in laws governing business occupations also was noted. It is a precept that similar provisions should be stated in the same way every time. This is particularly true as to provisions that relate to licensing. To that end, therefore, provisions of the existing law that were retained and new provisions that were added have been conformed to the language and organization of revised articles.

During the 1987 interim, the Joint Subcommittee met almost weekly to consider the laws relating to electricians, plumbing, and real estate brokers. Six of the meetings concerned the real estate brokers laws.

At these meetings, numerous helpful comments were provided by interested parties, including Jonathan Acton, II, from the Attorney General's Office, Susan C. Atkins for the Greater Baltimore Board of Realtors, Kay Bienen for the Institute of Home Builders, W. Miles Cole for the Maryland Association of Counties, B. Reginald Cooper of the Maryland Real Estate Commission, Judith Donaldson from the Department of Licensing and Regulation, Karl O. Gilbert for the Maryland Association of Realtors, Michael P. Goodfellow of the Maryland Real Estate Commission, Hank Greenberg from the Attorney General's Office, Joan Hatfield for the Montgomery County Board of Realtors, Edgar C. Hilley for the Maryland Association of Realtors, H. Bernie Jackson for the Real Estate Brokers of Baltimore, Caroline Lewis for the Apartment and Office Building Association, Robert E. Mitchell of the Maryland Real Estate Commission, Nick Owens from the Department of Economic and Employment Development, Frances X. Pugh from the Attorney General's Office, Lisa Taylor for the Montgomery County Board of Realtors, Mary Vaarwerk for the Montgomery County Board of Realtors, and Ida M. Wyatt for the Real Estate Brokers of Baltimore.

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Copies of each draft revision were distributed to representatives of various State and local organizations of real estate brokers, representatives of State and local government, representatives of the Maryland Housing Resource Corporation, interested real estate brokers, and other interested persons. Also the staff consulted closely with representatives of the Maryland Association of Realtors and with representatives of the Maryland Real Estate Commission and other officials of the Department of Licensing and Regulation.

The drafts were prepared by the staff of the Division of Statutory Revision. Dennis Robin is the Article Supervisor for the Business Occupations Article. Marie Razulis and Geoffrey Cabin assisted in the preparation of this Title. Additional staff members whose efforts contributed to Senate Bill 201 are Phyllis Helmick, Earline Johnson, Irene Martelli, Jeffery Meyers, and Frances Pyle.

II. SUBCOMMITTEE COMMENTS.

In nonsubstantive revisions, revisor's notes provide a link between the current and revised law, by explaining, in detail, their relationship. Each section -- or, in some instances, subsection -- of the revised law would be followed by a revisor's note that identifies the present law that the new section or subsection replaces. These revisor's notes also explain all significant changes made in the revision process. Although not part of the law, revisor's notes serve an important function in preserving the intent and substance of the present law. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

"These notes were part of the legislation enacting the revisions explaining to the legislators not only what changes were effected but what their expressed intention was in changing the wording." Murray v. State, 27 Md. App. at 409 (Emphasis in original).

The Subcommittee Comments in Senate Bill 201 are drafted to serve the same purpose.

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In light of their importance as recognizable elements of legislative history, the Subcommittee Comments in the third reading file bill will differ from those in the first reading file bill as little as practicable. Additional minor changes also may be made in them before publication.

In some instances, comments may be rendered obsolete by separate legislation enacted during this Session. The Division staff will update these comments, which the Michie Company then will publish under the heading of "Special Subcommittee Comments".

III. STRUCTURE OF SENATE BILL 201.

Senate Bill 201 proposes creation of Article 56A -- Miscellaneous Business Occupations, pending anticipated enactment of the revised Business Occupations Article during the 1989 Session. Article 56A would include the Joint Subcommittee's proposed revision of the electricians laws (House Bill 303), plumbing laws (House Bill 302), and real estate brokers laws (Senate Bill 201).

Each of these bills contains Title 1, which includes definitions and provisions generally applicable to all three occupations.

IV. LIST OF SIGNIFICANT CHANGES FOR REAL ESTATE BROKERS LAWS.

While almost every section of the revised title involves an extensive revision of the current law, the majority of the changes would be considered routine under a normal nonsubstantive revision prepared by the Division. The following sets forth a general summary of those points that merit special attention by the General Assembly.

This list is based on a comparison of the current real estate brokers law (Art. 56, §§ 212 to 232A of the Code) and Senate Bill 201. References to Senate Bill 201 are to the First Reading File Copy.

1. Terminology.

Senate Bill 201 would rename the "Real Estate Commission of Maryland" to be the "State Real Estate Commission" or "Commission", to conform to other board designations in the proposed Business Occupations Article. See page 9, lines 25 and 26, and the Subcommittee Comment at lines 30 through 38.

Senate Bill 201 also would replace the term "real estate salesman" with the gender neutral term "real estate salesperson". See page 14, lines 34 through 37, and the Subcommittee Comment at lines 41 through 44.

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2. Definition of "associate real estate broker" (4-101(c)).

Although current law contains a definition of an "associate real estate broker", Senate Bill 201 would clarify the definition by providing that an individual must hold an associate real estate broker license in order to be an associate real estate broker. See page 8, lines 29 to 37, and the Subcommittee Comment at page 9, lines 1 through 8.

3. Definitions of "provide real estate brokerage services" (4-101(k)) and "real estate broker" (4-101(m)).

Senate Bill 201 proposes a definition of "provide real estate brokerage services" based in part on the activities enumerated in the current definition of "real estate broker" in Art. 56, § 212(a). See beginning at line 41 on page 11 through line 20 on page 12, and the Subcommittee Comment beginning at line 21 on page 12 through line 31 on page 13.

Senate Bill 201 would define the term "real estate broker" as "an individual who provides real estate brokerage services". This definition is stated in the standard form used to define the various business professionals regulated under the proposed Business Occupations Article. See page 14, lines 14 and 15, and the Subcommittee Comment at lines 16 through 20.

4. Membership of the Commission (4-202).

Senate Bill 201 would clarify that, to meet the residency requirement, a professional member of the Commission may reside in any of the counties listed in the specific geographic area from which the member is appointed. See page 17, lines 5 through 18 and lines 25 through 28, and the Subcommittee Comment at page 19, lines 34 through 38.

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5. Executive Director (4-205).

Current Art. 56, § 214(a) contains several provisions that apply only to the current executive director of the Commission. Senate Bill 201 proposes transfer of these provisions to the Session Laws in light of the limited application. See the Subcommittee Comment beginning at line 36 on page 23 through line 2 on page 24.

6. Code of Ethics (4-207) and regulations (4-208).

Current Art. 56, § 229A provides for a Code of Ethics. Senate Bill 201 would clarify that the existing Code of Ethics is to be amended or superseded by adoption of regulations and would ensure that an amended or new Code adheres to the purpose and function of the original Code. See page 25, lines 22 through 24, and the Subcommittee Comment at lines 31 through 43.

Senate Bill 201 also proposes that a copy of the Code of Ethics and the regulations of the Commission be "provided[d]" to each licensee, rather than mailed, as required under current law. The Subcommittee recommended that the requirement of individual mailings be deleted in light of the limited resources available to the Commission. See page 25, lines 27 and 28, and page 27, lines 1 and 2, and the Subcommittee Comments at page 26, lines 10 through 21, and at page 27, lines 34 through 47. Senate Bill 201 also would add a requirement that the Code of Ethics and regulations be provided to licensees "at least once every 2 years", since current law fails to specify a time frame within which the Commission is to provide the Code of Ethics and the regulations to licensees. See page 25, lines 27 and 28, and page 27, lines 1 and 2, and the Subcommittee Comments at page 26, lines 4 through 9, and at page 27, lines 27 through 33.

7. General enforcement powers of Commission (4-209(a)).

Senate Bill 201 proposes several changes in the enforcement powers of the Commission. The reference, in the current law, to enforcement of the "purposes" of this title would be changed to "provisions" of this title, because the Subcommittee found the reference to "purposes" to be overly broad. See page 28, lines 5 and 6, and the Subcommittee Comment at page 29, lines 34 through 40.

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Senate Bill 201 would clarify that the specified powers of the Commission to hold hearings, administer oaths, issue subpoenas, and take depositions apply generally to any disciplinary or enforcement proceeding. See page 28, lines 7 through 18, and the Subcommittee Comment at page 29, lines 41 through 47. Current law limits the power of the Commission to subpoena and to take the deposition of "any person in the State". Senate Bill 201 would expand the power of the Commission to issue a subpoena and to take a deposition by deleting the reference to "any person in the State". See the Subcommittee Comment at page 30, lines 11 through 16. The power of the Commission to issue a subpoena also would be expanded to include the power to issue a subpoena "for the production of evidence". See page 28, lines 14 and 15, and the Subcommittee Comment at page 30, lines 1 through 5. Finally, if a person fails to comply with a subpoena, any party to a proceeding would have the power to petition the court to compel compliance with the subpoena. See page 28, lines 22 through 25, and the Subcommittee Comment at page 30, lines 17 through 22.

8. Injunctive power (4-209(b)).

Current Art. 56, § 231A allows the Commission to seek an injunction if the Commission concludes that "continuing conduct" will result in irreparable harm "to any citizen of the State". Senate Bill 201 would expand the power of the Commission to seek an injunction by eliminating the requirement to show "continuing conduct" and by providing that the harm can be to "any person". See page 28, lines 27 through 31, and the Subcommittee Comment at page 29, lines 30 through 33, and page 30, lines 36 through 40. The power of the Commission to sue for an injunction presumably is limited by the power of a court to deny an injunction if the adverse party shows that there is property from which damages can be made. See Md. R. BB76. Senate Bill 201 would remove this limitation. See page 28, lines 32 and 33 and 37 and 38, and the Subcommittee Comment at page 29, lines 26 through 29.

9. Educational courses (4-212(4)).

Current Art. 56, § 226(a) requires the Commission to approve and mail educational material to licensees. To conform to Commission practice with regard to a continuing education program, Senate Bill 201 would require approval of "educational courses" and would delete the mailing requirement as obsolete. See page 32, line 36, and the Subcommittee Comment at page 33, lines 4 through 13.

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10. Licensing of individuals as opposed to firms (4-301(a)).

It is unclear whether the law currently allows both an individual and a firm to be licensed to provide real estate brokerage services or whether only an individual can qualify for a license. Senate Bill 201 would resolve this ambiguity by stating clearly that only an individual may qualify for a license. This proposal conforms to Commission practice. See beginning at line 37 on page 34 through line 2 on page 35, the Subcommittee Comment at page 35, lines 32 through 35, and the General Subcommittee Comment at page 164, lines 17 through 32.

11. Licensing exceptions (4-301(b)).

Senate Bill 201 would exempt from the licensing requirement all types of lenders while they are managing or selling property acquired in connection with mortgage foreclosures. See page 35, lines 5 through 9, and the Subcommittee Comment beginning at line 38 on page 35 through line 3 on page 36.

Current Art. 56, § 212(f)(5) provides a licensing exception for "investment home builders". Senate Bill 201 would delete the word "investment", providing an exception for "home builders". This deletion is proposed because the word "investment" does not convey a clear meaning and, therefore, courts generally have applied the exception to all home builders. Further, Senate Bill 201 would expressly limit the exception to the "initial" sale of a home by a builder. See page 35, lines 16 and 17, and the Subcommittee Comment beginning at line 41 on page 36 through line 3 on page 37.

At the request of the Commission, the Department, and the Office of the Attorney General, Senate Bill 201 proposes an exception to the licensing requirement for business opportunities brokers. See page 35, lines 21 through 24, and the Subcommittee Comment at page 36, lines 13 through 17.

12. Qualifications for real estate salesperson license (4-303).

Senate Bill 201 would require an applicant for a real estate salesperson license to obtain a commitment of affiliation from a licensed real estate broker and to submit adequate evidence of that commitment to the Commission. See page 39, lines 1 through 5, and the Subcommittee Comment at lines 34 through 46.

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13. Qualifications for associate real estate broker license (4-304).

Current law fails to provide adequately for the current Commission practice of granting associate real estate broker licenses. A few references to associate real estate brokers appear in the law, but there is no express licensing scheme. Senate Bill 201 would remedy this situation by adding provisions regarding associate real estate brokers throughout the revised law.

In particular, § 4-304 sets forth express requirements for an applicant for an associate real estate broker license. Under this section, an applicant for an associate real estate broker license, in addition to meeting the requirements for a real estate broker license, would be required to obtain a commitment of affiliation from a licensed real estate broker and to submit adequate evidence of the commitment to the Commission. These changes conform to the current practice of the Commission. See page 41, lines 1 through 13 and the Subcommittee Comment at lines 14 through 37, and the General Subcommittee Comment at page 165, lines 19 through 51.

14. Examinations (4-306).

Senate Bill 201 would state expressly that the Commission may use a testing service to administer examinations and may delegate to the testing service responsibility for setting the time and place of examinations and for notifying applicants. See page 45, lines 9 through 18, and the Subcommittee Comment at page 46, lines 1 through 11.

15. Application for licenses (4-307).

In conformity with the practice of the Commission, Senate Bill 201 would add several requirements that an applicant for a license must meet. These include: submitting a copy of examination results to the Commission (4-307(2)); requiring all applicants to make a payment to the Guaranty Fund (4-307(3)); submitting a credit report to the Commission, if the applicant applies for a real estate broker license (4-307(5)); and submitting a commitment of affiliation to the Commission, if the applicant applies for a real estate salesperson license or an associate real estate broker license (4-307(7)). See page 47, lines 3 through 7 and 14 through 33, and the Subcommittee Comment at page 48, lines 1 through 13 and beginning at line 33 on page 48 through line 22 on page 49.

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Senate Bill 201 would increase the application fees to \$80 for a real estate broker license, \$50 for an associate real estate broker license, and \$30 for a real estate salesperson license. See page 47, lines 8 through 13, and the Subcommittee Comment at page 48, lines 14 through 32.

Under Senate Bill 201, an individual who is a licensed associate real estate broker or real estate salesperson would be required to inform each real estate broker with whom the individual is affiliated that the individual intends either to affiliate with an additional real estate broker or to obtain a real estate broker license. See page 61, lines 1 through 4 and 30 through 33, page 62, lines 1 through 3 and 27 through 30, and page 63, lines 1 through 4. See also page 47, lines 27 through 33, and the Subcommittee Comment at page 49, lines 11 through 22.

16. Waiver of requirements (4-308).

Senate Bill 201 proposes to resolve an anomaly in the current law that allows a nonresident to obtain a real estate salesperson or real estate broker license more easily than a resident. Under Senate Bill 201, any applicant who holds a comparable or equivalent license granted by another state would be allowed to seek a waiver of the requirements for obtaining a license in this State. See page 50, lines 2 through 6, and the Subcommittee Comment at lines 26 through 47.

17. Granting of licenses; license certificate and pocket card (4-309).

Senate Bill 201 would codify the current practice of granting associate real estate broker licenses by requiring the Commission to grant an "appropriate" license to each applicant who meets the necessary requirements. See page 51, lines 25 through 28, and the Subcommittee Comment at page 52, lines 4 through 13.

Senate Bill 201 would add a requirement for inclusion, on each license certificate and pocket card, of the name of the firm for whom an associate real estate broker or real estate salesperson will be authorized to provide real estate brokerage services. See page 51, lines 38 through 43, and the Subcommittee Comment at page 52, lines 17 through 29.

18. Scope of license (4-310).

Current law does not delineate clearly the scope of any of the licenses that the Commission grants. Senate Bill 201 would use a standard format to define the scope of the real estate broker license, associate real estate broker license, and the real estate salesperson license. Proposed § 4-310(b) includes language that expressly would provide that an associate real estate broker or real estate salesperson license only authorizes the holder of the license to provide real estate brokerage services on behalf of a licensed real estate broker who is named in the license certificate of the holder and with whom the holder continues to be affiliated. These limitations conform to the current practice of the Commission. See beginning at line 38 page 52 through line 10 on page 53 and the Subcommittee Comment at lines 11 and 12.

19. Transfer of affiliation (4-311).

Current law does not provide a procedure for an associate real estate broker or real estate salesperson to transfer affiliation from 1 licensed real estate broker to another. The practice of the Commission, however, has been to allow such transfers. Senate Bill 201 would authorize transfers specifically and would set out the requirements and procedures for obtaining them. The requirements would include payment of a fee of \$10. See beginning at line 26 on page 53 through line 37 on page 54 and the Subcommittee Comment beginning at line 38 on page 54 through line 2 on page 55 and lines 27 through 34.

20. Exchange of license (4-312).

Although not addressed in the current law, the Commission has developed procedures for exchanging 1 type of license for another type of license. Senate Bill 201 would provide explicit authority, requirements, and procedures for exchanges of licenses. The fees for exchanging a license would be the same as the fees for applying for that type of license. See beginning at line 2 on page 56 through line 34 on page 58 and the Subcommittee Comment at page 58, lines 35 through 40, and at page 59, lines 40 through 52.

21. Obtaining additional licenses (4-313).

Although the Attorney General's Office has advised the Commission that it must issue additional licenses on proper application from a licensee, current law does not provide procedures for application or issuance. Senate Bill 201 sets forth specific procedures based on the

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current practice of the Commission. The fees for obtaining an additional license would be the same as the fees for applying for that type of license. See beginning at line 37 on page 60 through line 32 on page 64 and the Subcommittee Comment beginning at line 33 on page 64 through line 25 on page 65 and at page 66, lines 8 through 26.

22. Renewal of licenses (4-314).

Senate Bill 201 proposes increasing to \$50 the renewal fee for an associate real estate broker license and establishing uniform fees for residents and nonresidents. See page 68, lines 6 and 7, and the Subcommittee Comment at page 69, lines 5 through 10, 17 through 25, and 31 through 36.

Senate Bill 201 also would give licensees a grace period of 60 days to renew a license retroactively. See page 68, lines 23 through 26, and the Subcommittee Comment at page 70, lines 8 through 14.

23. Continuing education (4-315).

Senate Bill 201 would clarify that professional organizations other than those specifically mentioned in the law may conduct continuing education courses. See page 71, lines 5 through 7, and the Subcommittee Comment at lines 35 through 40.

24. Inactive status (4-316).

Senate Bill 201 would clarify the circumstances under which and procedures by which the Commission places a license on inactive status. See page 72, lines 14 through 33, and the Subcommittee Comment at page 74, lines 7 through 9, and beginning at line 43 through line 3 on page 75. The procedure for reactivating an inactive license also would be clarified. See beginning at line 14 on page 73 through line 3 on page 74 and the Subcommittee Comment on page 76, lines 6 through 26.

Senate Bill 201 would expressly enable the Commission to take disciplinary action against a licensee even while the license is on inactive status. See beginning at line 39 on page 72 through line 2 on page 73 and the Subcommittee Comment at page 74, lines 13 through 18.

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25. License certificates (4-317).

In conformity with industry practice, Senate Bill 201 would require an associate real estate broker or real estate salesperson who is affiliated with a real estate broker to display the license certificate in the office or branch office of the real estate broker where the associate real estate broker or real estate salesperson primarily works. See page 76, lines 1 through 13, and the Subcommittee Comment at page 77, lines 25 through 31.

Senate Bill 201 proposes increasing to \$5 the fee for issuing a new license certificate to replace a lost or destroyed certificate. See page 76, line 21, and the Subcommittee Comment beginning at line 40 on page 76 through line 8 on page 77. See also the Subcommittee Comment at page 77, lines 8 through 12 and 17 through 23.

26. Change of name of licensee or firm (4-318).

Senate Bill 201 sets forth an explicit procedure for changing the name of a licensee or a firm on a license certificate or pocket card. See page 78, lines 13 through 22 and the Subcommittee Comment at lines 30 through 37.

27. Death of real estate broker (4-319).

Current law authorizes an adult family member to carry on the business of a deceased real estate broker. Senate Bill 201 would provide a specific mechanism by which the adult family member may exercise this authority. Senate Bill 201 also would add language expressly limiting the scope of authorized activities to the winding up of the business and would limit the time allowed under this procedure to 6 months. Consistent with current law, Senate Bill 201 also would provide a mechanism for a family member who is a licensed real estate salesperson to continue to operate the business for an additional 4 years. See page 79, lines 20 through 25, and the Subcommittee Comment on page 81, lines 1 through 6.

28. Employment of and contractual arrangements with salespersons and associate brokers (4-320).

Current law fails to state the relationship of a real estate broker to an associate real estate broker or real estate salesperson. Senate Bill 201 would clarify the manner in which an associate real estate broker or real estate salesperson may become affiliated with a real estate

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broker, the legal status of an individual who provides real estate brokerage services on behalf of a real estate broker, and the manner in which an affiliation may be terminated. See beginning at line 39 on page 81 through line 33 on page 82 and the Subcommittee Comment beginning at line 34 on page 82 through line 10 on page 84.

29. Practice through corporations or partnerships (4-321).

Current law lacks specific provisions on the manner in which a real estate broker operates through a corporate or partnership firm, the respective responsibilities of the real estate broker and the firm, and other aspects of their relationship. Senate Bill 201 would remedy this situation. A real estate broker would have to meet certain requirements to qualify to provide real estate brokerage services through a corporate or partnership firm. See page 84, lines 16 through 26. Each individual who provides real estate brokerage services through a firm would have to be either a licensed real estate broker who is the broker of the firm or a licensed associate real estate broker or licensed real estate salesperson who is affiliated with and provides services on behalf of the broker of the firm. See page 85, lines 10 through 21. Senate Bill 201 also would clarify the responsibilities of a licensed real estate broker who serves as the broker of a firm. See page 85, lines 22 through 26. Also, under Senate Bill 201, the liability of a corporation or partnership that provides real estate brokerage services and the liability of individuals who provide real estate brokerage services through a corporation or partnership would be delineated. See page 85, lines 27 through 38. See also the General Subcommittee Comment beginning at line 33 on page 164 through line 2 on page 165.

30. Disciplinary grounds (4-322).

Current law contains numerous grounds for disciplinary action. Senate Bill 201 would clarify several of these grounds. See specifically proposed § 4-322(5) at page 87, lines 23 through 28, and the Subcommittee Comment at page 91, lines 27 through 36; proposed § 4-322(6) at page 87, lines 29 through 31, and the Subcommittee Comment at page 91, lines 37 through 39; proposed § 4-322(7) at page 87, lines 32 through 35, and the Subcommittee Comment at page 91, lines 40 through 43; proposed § 4-322(16), beginning at line 38 on page 88 through line 15 on page 89 and the Subcommittee Comment at page 92, lines 6 through 13; proposed § 4-322(24) at

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page 90, lines 6 through 13, and the Subcommittee Comment at page 92, lines 17 through 30; and proposed § 4-322(26) at page 90, lines 17 through 19, and the Subcommittee Comment at page 92, lines 34 through 37.

31. Hearings (4-325).

Senate Bill 201 would require the Commission to give at least 10 days' notice to a real estate broker before a hearing that concerns an affiliated associate real estate broker or real estate salesperson. See beginning at line 35 on page 96 through line 2 on page 97 and the Subcommittee Comment at page 98, lines 12 through 19.

32. Real estate hearing board (4-327).

Based on the current practice of the Commission, Senate Bill 201 states express procedures for a hearing board to determine whether to act on or to dismiss a complaint. These procedures correspond to those that the Commission follows when it acts without a hearing board on these matters. See page 100, lines 1 through 12, and the Subcommittee Comment beginning at line 39 on page 100 through line 7 on page 101.

33. Summary actions against licensees (4-328 and 4-329).

Senate Bill 201 would provide express procedures for the summary revocation of a license based on the action of other agencies (4-328) and the summary suspension of a license based on trust fund violations (4-329). Senate Bill 201 also would provide express authority for the Commission to elect to proceed on these grounds without using a summary procedure. See beginning at line 26 on page 101 through line 28 on page 102 and beginning at line 20 on page 103 through line 15 on page 104 and the Subcommittee Comments beginning at line 33 on page 102 through line 16 on page 103 and page 104, lines 22 through 35.

34. Bonds (4-330(c)).

Senate Bill 201 would raise to \$50,000 the limit on the bond that a court may require to stay the revocation or suspension of a license. See page 105, lines 12 through 14, and the Subcommittee Comment at lines 28 through 33.

35. Notice of license suspension or revocation (4-331).

Current law requires that the Commission notify "all licensees" by mail or "in an official publication" of a license suspension or revocation. In conformity with the current practice of the Commission, Senate Bill 201 merely would require notification of the licensee and each real estate broker with whom the licensee is affiliated. See page 106, lines 3 through 10, and the Subcommittee Comment beginning at line 34 on page 106 through line 2 on page 107.

36. Real Estate Guaranty Fund (Subtitle 4).

In conformity with the current practice of the Commission, Senate Bill 201 would expressly require that an individual pay an "initial" fee to the Guaranty Fund only once, even if the individual obtains more than 1 license. See page 108, lines 27 through 30, and the Subcommittee Comment at page 109, lines 3 through 7.

Senate Bill 201 would require the Commission to give a real estate broker notice of any Guaranty Fund claim against an affiliated associate real estate broker or real estate salesperson. See page 112, lines 30 through 34, and the Subcommittee Comment at page 113, lines 18 through 23.

37. Trust accounts (Subtitle 5, Part I).

Current law that relates to trust accounts is confusing, incomplete, and, in some instances, inaccurate and misleading. Senate Bill 201 proposes several important changes.

The terms "beneficial owner" and "trust money" are defined expressly. See page 120, lines 3 and 4, 8 through 12, and 21 through 25.

Senate Bill 201 would require an associate real estate broker or real estate salesperson who obtains trust money to submit the trust money to the real estate broker for whom the associate real estate broker or real estate salesperson provided the real estate brokerage services. See page 121, lines 1 through 6.

Senate Bill 201 proposes to allow a real estate broker to deposit trust money in "a noninterest bearing checking account", "a noninterest bearing savings account", or "any combination of these accounts". See page 122, lines 21 through 26. Although the Subcommittee interpreted current Art. 56, § 227A to allow a real estate broker to elect, on the broker's own

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authority, to place trust money in either a noninterest bearing checking account or an interest bearing savings account on which the interest is payable to the owner or beneficial owner of the trust money, representatives of the Commission and of the industry advised that this interpretation is not consistent with current practice. These representatives stated that there was never an intention that the law allow a real estate broker to act unilaterally to place trust money in an interest bearing account (other than an account the interest on which is payable to the Maryland Housing Resource Corporation).

Further, these representatives stated that they were opposed to giving a real estate broker the discretion to deposit trust money in an interest bearing account. In deference to this position, Senate Bill 201 would delete the current language that seems to allow a real estate broker to elect, on the broker's own authority, to deposit trust money in an interest bearing account (other than an account on which the interest is payable to the Housing Resource Corporation). See the Subcommittee Comment beginning at line 30 on page 122 through line 22 on page 123.

On a related issue, members of the Subcommittee expressed considerable concern about the failure of financial institutions to pay interest on residential real estate deposits. Representatives of the Commission and of the Maryland Association of Realtors testified that parties to a contract of sale normally are not advised of their existing right to require that the deposit be placed in an interest bearing account and that, in fact, the vast majority of these deposits are placed in noninterest bearing accounts. Obviously, financial institutions benefit by holding these deposits without having to pay any interest. In rather candid testimony, representatives of the Commission and of the Maryland Association of Realtors admitted that the use of noninterest bearing accounts also benefits the larger real estate firms, because these firms obtain "leverage" in their dealings with financial institutions. When members of the Subcommittee voiced the opinion that buyers and sellers ought to receive some interest payment on these deposits, the representatives of the Commission and of the Maryland Association of Realtors responded that such a practice would be prohibitively expensive and burdensome. After considering this testimony, the Subcommittee elected to retain the status quo by not adding any provision that either would require the payment of interest to parties to a residential real estate sale contract or that would require a

real estate broker to advise the parties of their right to demand that the deposit be placed in an interest bearing account. Notwithstanding this decision, members of the Subcommittee expressed serious reservations about the current situation.

Senate Bill 201 (4-506) would provide expressly that a real estate broker has discretion to deposit trust money into an account that earns interest payable to the Maryland Housing Resource Corporation only if the owner or beneficial owner of the trust money does not instruct otherwise. See page 124, lines 40 through 45, and the Subcommittee Comment at page 126, lines 11 through 20.

Under current law, a real estate broker who participates in the Maryland Housing Resource Program must include a specified notice in any contract of sale. Senate Bill 201 proposes that the text of the notice begin with the clause "[u]nless the purchaser and seller give instructions to the contrary". See page 125, lines 32 and 33. The Subcommittee decided that, absent this clause, the required notice provides an incomplete and misleading statement about the options that are available for the disposition of trust money. Language similar to the clause that Senate Bill 201 would add was included in the original enactment of the notice provision, by Ch. 732, Acts of 1985, but was deleted by a later enactment. See Ch. 309, Acts of 1987. The effect of Senate Bill 201, therefore, would be to reinsert in the notice provision language similar to that included in the original enactment. See the Subcommittee Comment at page 126, lines 21 through 37.

38. Interest in corporation and partnerships (4-511).

Senate Bill 201 proposes expansion of the limitations on holding an interest in a corporation or partnership to interests held by associate real estate brokers. See page 128, lines 7 through 19, and the Subcommittee Comment at lines 23 through 28.

39. Professional service corporation (4-512).

Senate Bill 201 would add language expressly authorizing licensed associate real estate brokers to organize and own a professional service corporation. See page 129, lines 4 through 9, and the Subcommittee Comment at lines 35 through 42. The current law accords this authority to licensed real estate salespersons.

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40. Branch offices (4-518).

Senate Bill 201 would allow both residents and nonresidents to maintain branch offices in Maryland. See page 133, lines 35 and 36, and the Subcommittee Comment at page 135, lines 7 through 10.

41. Change in location of office (4-520).

Senate Bill 201 would establish a procedure for changing the location of a principal office or a branch office. See page 137, lines 27 through 36, and page 138, lines 3 through 11 and the Subcommittee Comment at page 138, lines 22 through 42, and page 139, lines 4 through 21.

42. Dishonored checks (4-521).

Senate Bill 201 would raise to \$20 the fee that is charged a person who tenders a bad check to the Commission. See page 139, lines 40 through 44, and the Subcommittee Comment at page 140, lines 8 through 11.

43. Real Estate Conservation Areas (4-522).

Current law purports to allow the Commission to suspend advertisement of the resale or rental of residential properties on certain grounds that courts have held do not qualify as substantial governmental interests and, therefore, held to be constitutionally unacceptable as a basis on which to restrict commercial speech. The grounds at issue are: (1) that "the ... economic stability of a neighborhood is threatened by the volume of real estate transactions"; (2) that "an abnormal real estate market with depressed values is developing in a neighborhood because of excessive sales offerings"; and (3) that "certain methods of advertising or solicitation could be damaging to the public or to the dignity and integrity of the real estate profession, or could be in violation of Article 56 of the Annotated Code of Maryland, or the regulations or code of ethics of the Real Estate Commission of Maryland". See Greater Baltimore Board of Realtors v. Hughes, 596 F. Supp. 906 (D. Md. 1984); 65 Op. Att'y Gen. 58 (1980). Senate Bill 201 proposes deletion of these grounds for suspension of advertising. See the Subcommittee Comment at page 142, lines 4 through 23.

In addition, Senate Bill 201 would add express grounds and procedures for the original suspension of advertising by the Commission. See beginning at line 35 on page 140 through line 17 on page 141 and the Subcommittee Comment beginning at line 24 on page 142 through line 4 on page 143.

44. Providing real estate brokerage services without license (4-601).

Current law provides that a "person, copartnership, association, or corporation" may not act as a real estate broker or real estate salesperson without a license. Senate Bill 201 would delete the reference to a "copartnership, association, or corporation" engaging in the business of a real estate broker or real estate salesman as erroneous, since only individuals, not business entities, may be licensed. See the Subcommittee Comment at page 150, lines 9 through 15, and the General Subcommittee Comment at page 164, lines 17 through 32. Senate Bill 201 also would add a specific reference to a licensed associate real estate broker as an individual who may provide real estate brokerage services on behalf of a real estate broker. See page 149, lines 30 through 35, and the Subcommittee Comment at page 150, lines 1 through 5.

45. Filing false statement regarding Guaranty Fund (4-610).

Current Art. 56, § 217A(g) provides that a person who files a false statement with the Commission in a claim against the Guaranty Fund is to be fined \$200. The meaning of this provision is unclear. Senate Bill 201, however, interprets this provision to be a criminal offense. See page 157, lines 10 through 14, and the Subcommittee Comment at lines 15 through 29. As to the penalty, see proposed § 4-613 (a)(13).

46. Violations by corporation, partnership, or other association (4-612).

Current law lacks any process by which to regulate a corporate or partnership firm that provides real estate brokerage services. Since these firms cannot be licensed, the Commission has no disciplinary authority over them. To address this problem, Senate Bill 201 would prohibit a corporation, partnership, or any other association from committing or causing another person to commit an act that constitutes a ground for disciplinary action against a licensee or violating or causing another person to violate any other provision of the revised law. See page 158, lines 4 through 11, and the Subcommittee Comment at lines 12 through 22.

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47. Penalties (4-613).

Current law contains a number of provisions that seem to be criminal prohibitions although no criminal penalty is specified. Senate Bill 201 would remedy this problem by providing a criminal penalty for violations of the following provisions: Handling of Trust Money (4-502); "Paying Compensation" (4-604); "Prohibited Payments To Lawyers; Soliciting Referral Business" (4-605); "Advertisements On Property Showing Cost and Capitalization of Ground Rent" (4-606); and "Designation of Title Insurance, Settlement, or Escrow Company or Title Lawyer" (4-607). See page 158, lines 26 through 30 and 41, and page 159, lines 1 through 6, and the Subcommittee Comment at page 159, lines 20 through 29, and beginning at line 40 on page 160 through line 31 on page 161. See also the General Subcommittee Comment at page 167, lines 14 through 27.

Senate Bill 201 proposes a uniform penalty for violation of all but 1 of the criminal provisions in the real estate brokers' laws. The general penalty would be a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both. See beginning at line 26 on page 158 through line 13 on page 159. The single exception to the uniform penalty would be that a corporation, partnership, or association would be subject only to a \$5,000 fine for violation of proposed § 4-612. See page 159, lines 14 through 19 and the General Subcommittee Comment at page 167, lines 28 through 37.

48. Miscellaneous Provisions.

I. Transfers.

Part of Art. 56, § 224C requires a time-share developer to keep all records of trust money in a secured area within the office of the developer and authorizes the Commission to suspend summarily the registration of a developer for failing to account for money held in trust or to display records. Senate Bill 201 would add extensively to the provisions that relate to time-share developers, to conform to the proposed changes in the provisions for the handling of trust money by real estate brokers discussed under item 33 of this Report. However, Senate Bill 201 would transfer the provisions relating to time-share developers to § 11A-121 of the Real Property Article. See beginning at line 6 on page 169 through line 15 on page 170 and the Subcommittee Comment at lines 16 through 47, and the General Subcommittee Comment at page 167, lines 39 through 44.

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II. Deletions.

The fourth sentence of current Art. 56, § 217(c), which provides for the designation of a substitute real estate broker to act in the place of a broker who enters the armed services, is proposed for deletion as obsolete. See the General Subcommittee Comment at page 168, lines 23 through 28.

The second sentence of current Art. 56, § 221(a), which provides for the issuance of a "nonresident license" to a Maryland resident who moves from the State, is proposed for deletion. The Subcommittee decided not to perpetuate the meaningless distinction in the current law between resident and nonresident licenses. Under current law, the activities authorized under a "nonresident" license are identical to those authorized under a "resident" license. Therefore, no purpose is served by issuing licenses with different designations to residents and nonresidents. See the General Subcommittee Comment at page 166, lines 40 through 52, and page 168, lines 29 through 35.

Current Art. 56, § 223(k), as it relates to the requirement that a nonresident pay a fee for a particular service equal to the greater of the amount for residents of this State or the amount charged residents of this State by the state in which the nonresident resides, is proposed for deletion to establish a uniform system of fees to be charged both residents and nonresidents. After hearing testimony from members of the Commission, the Department, and the real estate industry, the Subcommittee concluded that the administrative costs imposed on the Commission by such a fee system significantly outweigh the benefit of any extra money that might be collected. See the General Subcommittee Comment at page 168, lines 36 through 48.

Respectfully submitted,

Elizabeth Buckler Veronis

Elizabeth Buckler Veronis
Revisor of Statutes

Dennis R. Robin

Dennis R. Robin
Article Supervisor
Business Occupations Article

Marie H. Razulis

Marie Razulis
Legislative Analyst